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In the Supreme Court of the United States.

OCTOBER TERM, 1912.

EFFIE HOKE AND BASILE ECONOMIDES, Plaintiffs in Error, *v.* THE UNITED STATES. } No. 381.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS.

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IN ERROR TO AND ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

DELLA BENNETT, PLAINTIFF IN ERROR and Petitioner, *v.* THE UNITED STATES. } No. 603.

IN ERROR TO AND ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

METHOD OF ARGUMENT.

The question of the constitutionality of the White-Slave Traffic Act being involved in each of these cases, that question will be discussed first. Each case will then be taken up, according to its number on the docket, and the alleged errors peculiar to it examined.

The White-Slave Traffic Act (36 Stat., 825).

The act is set forth in full, although only sections 2, 3, and 4 are involved in the present cases.

CHAP. 395. An Act To further regulate interstate and foreign commerce by prohibiting the transportation therein for immoral purposes of women and girls, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the term "interstate commerce," as used in this Act, shall include transportation from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, and the term "foreign commerce," as used in this Act, shall include transportation from any State or Territory or the District of Columbia to any foreign country and from any foreign country to any State or Territory or the District of Columbia.

SEC. 2. That any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, or in any Territory or in the District of Columbia, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in

any other immoral practice; or who shall knowingly procure or obtain, or cause to be procured or obtained, or aid or assist in procuring or obtaining, any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in any Territory or the District of Columbia, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in any Territory or the District of Columbia, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment of not more than five years, or by both such fine and imprisonment, in the discretion of the court.

SEC. 3. That any person who shall knowingly persuade, induce, entice, or coerce, or cause to be persuaded, induced, enticed, or coerced, or aid or assist in persuading, inducing, enticing, or coercing any woman or girl to go from one place to another in interstate or foreign commerce, or in any Territory or the District of Columbia, for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person that such woman

or girl shall engage in the practice of prostitution or debauchery, or any other immoral practice, whether with or without her consent, and who shall thereby knowingly cause or aid or assist in causing such woman or girl to go and to be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate or foreign commerce, or any Territory or the District of Columbia, shall be deemed guilty of a felony and on conviction thereof shall be punished by a fine of not more than five thousand dollars, or by imprisonment for a term not exceeding five years, or by both such fine and imprisonment, in the discretion of the court.

SEC. 4. That any person who shall knowingly persuade, induce, entice, or coerce any woman or girl under the age of eighteen years from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, with the purpose and intent to induce or coerce her, or that she shall be induced or coerced to engage in prostitution or debauchery, or any other immoral practice, and shall in furtherance of such purpose knowingly induce or cause her to go and to be carried or transported as a passenger in interstate commerce upon the line or route of any common carrier or carriers, shall be deemed guilty of a felony, and on conviction thereof shall be punished by a fine of not more than ten thousand dollars, or by imprisonment for a term not exceeding ten years, or by both such fine and imprisonment, in the discretion of the court.

SEC. 5. That any violation of any of the above sections two, three, and four shall be prosecuted in any court having jurisdiction of crimes within the district in which said violation was committed, or from, through, or into which any such woman or girl may have been carried or transported as a passenger in interstate or foreign commerce, or in any Territory or the District of Columbia, contrary to the provisions of any of said sections.

SEC. 6. That for the purpose of regulating and preventing the transportation in foreign commerce of alien women and girls for purposes of prostitution and debauchery, and in pursuance of and for the purpose of carrying out the terms of the agreement or project of arrangement for the suppression of the white-slave traffic, adopted July twenty-fifth, nineteen hundred and two, for submission to their respective governments by the delegates of various powers represented at the Paris conference and confirmed by a formal agreement signed at Paris on May eighteenth, nineteen hundred and four, and adhered to by the United States on June sixth, nineteen hundred and eight, as shown by the proclamation of the President of the United States, dated June fifteenth, nineteen hundred and eight, the Commissioner-General of Immigration is hereby designated as the authority of the United States to receive and centralize information concerning the procuration of alien women and girls with a view to their debauchery, and to exercise supervision over such alien women and girls, receive their declarations, establish

their identity, and ascertain from them who induced them to leave their native countries, respectively; and it shall be the duty of said Commissioner-General of Immigration to receive and keep on file in his office the statements and declarations which may be made by such alien women and girls, and those which are hereinafter required pertaining to such alien women and girls engaged in prostitution or debauchery in this country, and to furnish receipts for such statements and declarations provided for in this act to the persons, respectively, making and filing them.

Every person who shall keep, maintain, control, support, or harbor in any house or place for the purpose of prostitution, or for any other immoral purpose, any alien woman or girl within three years after she shall have entered the United States from any country, party to the said arrangement for the suppression of the white-slave traffic, shall file with the Commissioner-General of Immigration a statement in writing setting forth the name of such alien woman or girl, the place at which she is kept, and all facts as to the date of her entry into the United States, the port through which she entered, her age, nationality, and parentage, and concerning her procuration to come to this country within the knowledge of such person, and any person who shall fail within thirty days after such person shall commence to keep, maintain, control, support, or harbor in any house or place for the purpose of prostitution, or for any other immoral purpose, any alien woman or girl within three years

after she shall have entered the United States from any of the countries, party to the said arrangement for the suppression of the white-slave traffic, to file such statement concerning such alien woman or girl with the Commissioner-General of Immigration, or who shall knowingly and willfully state falsely or fail to disclose in such statement any fact within his knowledge or belief with reference to the age, nationality, or parentage of any such alien woman or girl, or concerning her procuration to come to this country, shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not more than two thousand dollars, or by imprisonment for a term not exceeding two years, or by both such fine and imprisonment, in the discretion of the court.

In any prosecution brought under this section, if it appear that any such statement required is not on file in the office of the Commissioner-General of Immigration, the person whose duty it shall be to file such statement shall be presumed to have failed to file said statement, as herein required, unless such person or persons shall prove otherwise. No person shall be excused from furnishing the statement, as required by this section, on the ground or for the reason that the statement so required by him, or the information therein contained, might tend to criminate him or subject him to a penalty or forfeiture, but no person shall be prosecuted or subjected to any penalty or forfeiture under any law of the United States for or on

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account of any transaction, matter, or thing, concerning which he may truthfully report in such statement, as required by the provisions of this section.

SEC. 7. That the term "Territory," as used in this Act, shall include the district of Alaska, the insular possessions of the United States, and the Canal Zone. The word "person," as used in this Act, shall be construed to import both the plural and the singular, as the case demands, and shall include corporations, companies, societies, and associations. When construing and enforcing the provisions of this Act, the act, omission, or failure of any officer, agent, or other person, acting for or employed by any other person or by any corporation, company, society, or association within the scope of his employment or office, shall in every case be also deemed to be the act, omission, or failure of such other person, or of such company, corporation, society, or association, as well as that of the person himself.

SEC. 8. That this Act shall be known and referred to as the "White-slave traffic Act."

Approved, June 25, 1910.

Section 8 of the act provides that it shall be known and referred to as the "White-Slave Traffic Act." This title, the provisions of sections 2, 3, and 4 of the act with reference not only to the transportation in interstate and foreign commerce of women and girls for the purpose of prostitution or debauchery, or any other immoral purpose, but to persuading, inducing, enticing, and coercing any woman or girl to go and be transported from one place to another in interstate or foreign commerce for any such purpose, and the fact that the Federal supervision of alien women and girls and of persons keeping or harboring them in homes of prostitution or for any other immoral purpose, provided for by section 6 of the act, is said to be established in pursuance of and for the purpose of carrying out the international agreement for the suppression of the white-slave traffic signed at Paris on May 18, 1904, and which was adhered to by the United States on June 6, 1908, all indicate that the underlying purpose of the act is the suppression of such traffic in women and girls so far as it comes within the jurisdiction of Congress over interstate and foreign commerce.

This purpose was also plainly stated by the committees of Congress in recommending the passage of the bill. Thus the House Committee on Interstate

and Foreign Commerce (H. Rept. No. 47, 61st Cong., 2d sess.), in reporting the bill, said:

THE WHITE-SLAVE TRADE.

A material portion of the legislation suggested and proposed is necessary to meet conditions which have arisen within the past few years. The legislation is needed to put a stop to a villainous interstate and international traffic in women and girls. The legislation is not needed or intended as an aid to the States in the exercise of their police powers in the suppression or regulation of immorality in general. It does not attempt to regulate the practice of voluntary prostitution, but aims solely to prevent panderers and procurers from compelling thousands of women and girls against their will and desire to enter and continue in a life of prostitution.

The evil, as a present-day existing evil of widespread dimensions which has arisen, has been given careful attention by the representatives of most of the civilized nations of the world, and has been made the subject of an international agreement. Thousands of public-spirited citizens have combined in various National and State organizations for the purpose of lending their aid in its suppression. The white slave trade has been so prevalent that prosecuting officers, both State and Federal, even under inadequate and insufficient laws, have been able to secure many notable convictions. It is an evil which many State legislatures have attempted to regulate within the past two or three years by means

of the enactment of State statutes. *Inasmuch, however, as the traffic involves mainly the transportation of women and girls from the country districts to the centers of population and their importation from foreign nations* the evil is one which can not be met comprehensively and effectively otherwise than by the enactment of Federal laws.

Investigations conducted by Government agents disclose the fact that a national and international traffic exists in the buying, selling, and exploitation of women and young girls for immoral purposes. This traffic has come to be known the world over as "the white-slave trade." It is referred to by the Paris conference as "the trade in white women."

There are few who really understand the true significance of the term "white-slave trade." Most of those who have given only a casual thought to the subject have the impression that women who lead immoral lives in public houses are there voluntarily, either because they are attracted by the excitement of such a life or because they have found it an easy way of earning a living. In many cases such is not the fact. The results of careful investigation into this subject disclose the fact that the inmates of many houses of ill fame are made up largely of women and girls whose original entry into a life of immorality was brought about by men who are in the business of procuring women for that purpose—men whose sole means of livelihood is the money received from the sale and exploitation of

women who, by means of force and restraint, compel their victims to practice prostitution. These investigations have disclosed the further fact that these women are practically slaves in the true sense of the word; that many of them are kept in houses of ill fame against their will; and that force, if necessary, is used to deprive them of their liberty.

The characteristic which distinguishes "the white-slave trade" from immorality in general is that the women who are the victims of the traffic are unwillingly forced to practice prostitution. The term "white slave" includes only those women and girls who are literally slaves—those women who are owned and held as property and chattels—whose lives are lives of involuntary servitude; those who practice prostitution as a result of the activities of the procurer, and who, for a considerable period at least, continue to lead their degraded lives because of the power exercised over them by their owners. In short, the white-slave trade may be said to be the business of securing white women and girls and of selling them outright, or of exploiting them for immoral purposes. Its victims are those women and girls who, if given a fair chance, would, in all human probability, have been good wives and mothers and useful citizens.

The preamble of an existing international agreement on this subject states that the several Governments "being desirous to assure to women who have attained their majority and are subjected to deception or constraint,

as well as minor women and girls, an efficacious protection against the criminal traffic known under the name of trade in white women ('traite des blanches'), have resolved to conclude an arrangement with a view to concert proper measures to attain this purpose."

It is the purpose of the proposed laws, in so far as it may be possible for Congress to do so, to protect women and girls against this criminal traffic by providing for the punishment of those engaged in that traffic and by regulations established by the act.

These statements were also incorporated in the report of the Senate Committee on Immigration (S. Rept. No. 886, 61st Cong., 2d sess.) recommending the passage of the bill.

The evil intended to be remedied is well illustrated by the cases at bar.

In the second case in the order on the docket (No. 588), an innocent young girl is sought to be debauched, through the lure of stage life.

In the first case (No. 381) we find three girls, the youngest only 16, who have already taken the first misstep, being entrapped into a life of prostitution.

In the last cases (Nos. 602 and 603) the transactions referred to concern women who apparently had reached the depths of degradation. The "madame" pays their debts at their former places and the expenses of their transportation to her house, but charges up these items against them. They must, perforce, stay and work out this indebtedness. Practically, they are peons.

Scope of the Act.

In order to carry out its purpose to suppress this traffic in white women, so far as it comes within its jurisdiction, Congress, as stated in the title to the act, proceeded "to further regulate interstate and foreign commerce by prohibiting the *transportation* therein for immoral purposes of women and girls."

The several provisions of the act designed to accomplish this result (secs. 2, 3, and 4) will all be found, upon analysis, to be restrictions upon the *transportation*, in interstate and foreign commerce, of women and girls for the purpose of prostitution or debauchery, or other immoral purpose. They penalize, first, everyone who knowingly engages in such transportation; and, second, everyone who knowingly causes, aids, assists, induces, encourages, or facilitates such transportation. The latter class includes the provisions of section 2 against procuring the means of transportation for women and girls to be used in interstate or foreign commerce in going to any place for the immoral purposes stated, and the provisions of sections 3 and 4 against persuading, inducing, enticing, or coercing women and girls to go from one place to another in interstate or foreign commerce for immoral purposes, with the intent that such women and girls shall engage in the practice of prostitution or any other immoral practice. It will be noted that the offense is not complete under any of the several sections unless the woman or girl concerned shall actually be transported in interstate or foreign commerce.

The act is carefully confined to the evil intended to be remedied—the exploitation of women and girls for private gain—the white-slave traffic. It reaches procurers and panderers and those engaged in conducting immoral houses, shows, etc., who, treating women and girls as subjects of barter and gain, transport or cause them to be transported, or facilitate their transportation, from one State to another, or to a foreign country, for immoral purposes.

The act does not penalize either the voluntary going or coming of women for the purpose of prostitution, nor the act of one who, for charitable or philanthropic reasons, extends aid to an unfortunate female by purchasing transportation for her. Nor would a common carrier or its agents be guilty of violating the act simply by transporting a woman or girl who may intend to engage in prostitution. Only he who does any of the acts mentioned in the statute with the intent and purpose that the woman or girl involved *shall* engage in a life of prostitution or other immoral practice, is within the letter and spirit of the law. This appears not only from the language used with reference to purpose and intent, but from the insertion of the word "knowingly" in the several provisions of the act. It will be observed that in each of the cases at bar the indictment expressly charges that it was the purpose of the defendant or defendants that the woman or girl transported, or caused to be transported, *should* engage in the practice of prostitution, or give herself up to debauchery.

Statement of the several propositions which support the White-Slave Traffic Act as a regulation of interstate commerce.

1. The transportation and transit of persons is commerce, persons being both the subject and the means of commercial intercourse.

2. The regulative power of Congress extends to the absolute prohibition of the transportation and transit in interstate or foreign commerce of certain subjects of commerce.

3. The transportation of women and girls for the purpose of prostitution or debauchery or other immoral purpose is one of the kinds of interstate or foreign commerce that may be suppressed by Congress.

4. Having the power to prohibit the transportation of women and girls in interstate and foreign commerce for immoral purposes, and having exercised such power, Congress may make the prohibition effectual by punishing any person who knowingly induces, solicits, or facilitates such illegal transportation.

These propositions will now be discussed in detail. If sound, as they undoubtedly are under the decisions of this court, they dispose of every attack that is or can be made upon the constitutionality of the provisions of the White-Slave Traffic Act involved in these cases.

1. The transportation and transit of persons is commerce, persons being both the subject and the means of commercial intercourse.

This court has long held that the transportation and transit of persons is commerce, and subject to the exclusive regulation of Congress when interstate or foreign.

The statement of Mr. Justice Barbour, in *New York* v. *Miln* (11 Pet., 102, 136), that persons "are not the subject of commerce," has never received the sanction of the court. On the contrary, it has been expressly refuted, and the ruling made time and time again that the transportation and transit of persons is commerce.

Passenger Cases (7 How., 282, 429, 431, 436).
Henderson v. *Mayor of New York* (92 U. S., 259).
County of Mobile v. *Kimball* (102 U. S., 691).
Gloucester Ferry Co. v. *Pennsylvania* (114 U. S., 196).
Pickard v. *Pullman Southern Car Co.* (117 U. S., 34).
McCall v. *California* (136 U. S., 104).
Covington and Cincinnati Bridge Co. v. *Kentucky* (154 U. S., 204).

In the *Passenger Cases*, Mr. Justice Wayne pointed out why Mr. Justice Barbour's statement that persons were not the subject of commerce did not express the views of the court (7 How., 429, 431, 436); and the ruling in those cases that the statutes of the States of New York and Massachusetts, imposing taxes upon alien passengers arriving in the ports of those States,

was in conflict with the commerce clause of the Federal Constitution, necessarily repudiated such statement.

The other cases above cited also hold that the transportation and transit of persons in interstate and foreign commerce can not be taxed by the States without encroaching upon the exclusive jurisdiction of Congress.

In *County of Mobile* v. *Kimball* the court said (102 U. S., 702):

> * * * Commerce with foreign countries and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation and the *transportation* and *transit* of *persons* and property, as well as the purchase, sale, and exchange of commodities.

This definition was repeated in *Gloucester Ferry Co.* v. *Pennsylvania*, where it was said (114 U. S., 204):

> * * * And it needs no argument to show that the commerce with foreign nations and between the States, which consists in the transportation of persons and property between them, is a subject of national character, and requires uniformity of regulation.

So, in *Pickard* v. *Pullman Southern Car Co.*, in declaring a tax by the State of Tennessee on the privilege of running sleeping cars on railroads unconstitutional so far as it applied to interstate transportation of passengers, the court said (117 U. S., 46):

> The tax was a unit, for the privilege of the transit of the passenger and all its accessories.

> No distinction was made in the tax between *the right of transit, as a branch of commerce between the States,* and the sleeping and other conveniences which appertained to a transit in the car. *The tax was really one on the right of transit,* though laid wholly on the owner of the car. So, too, the service rendered to the passenger was a unit. *The car was equally a vehicle of transit,* as if it had been a car owned by the railroad company, and the special conveniences or comforts furnished to the passenger had been furnished by the railroad company itself. *As such vehicle of transit,* the car, so far as it was engaged in interstate commerce, was not taxable by the State of Tennessee; * * *.

In that case, after referring to *State Freight Tax case* (15 Wall., 232, 281) and *Railroad Co.* v. *Maryland* (21 Wall., 456, 472), the court said (117 U. S., 48–49):

> The decisions in the various cases in this court on the subject of a tax by a State on the bringing in of passengers from foreign countries, and which are collected and commented on by Mr. Justice Miller, in delivering the opinion of this court in the *Head Money Cases* (112 U. S., 580, 591), *show it to be a settled matter that to tax the transit of passengers from foreign countries or between the States is to regulate commerce.*
>
> The principles which governed the decisions in *Welton* v. *Missouri* (91 U. S., 275), *Guy* v. *Baltimore* (100 U. S., 434), and *Moran* v. *New Orleans* (112 U. S., 69), holding unlawful

> the State taxes in those cases on interstate commerce in merchandise, are equally applicable to the tax in this case on the *transit* of passengers.

In *McCall* v. *California* the court, in holding that persons engaged in soliciting interstate commerce could not be taxed, quoted with approval the following definition of the word "commerce" made by Pomeroy in his work on Constitutional Law, sec. 378 (136 U. S., 108):

> It includes the *fact of intercourse and of traffic* and the subject matter of intercourse and traffic. The fact of intercourse and traffic, again, embraces all the *means, instruments*, and places by and in which intercourse and traffic are carried on, and, further still, comprehends the act of carrying them on at these places and by and with these means. The subject matter of intercourse or traffic may be either things, goods, chattels, merchandise, or persons. All these may, therefore, be regulated.

In *Covington, etc., Bridge Co.* v. *Kentucky* it was held that mere travel was commerce, the court, referring to *Gloucester Ferry Co.* v. *Pennsylvania* (114 U. S., 196), saying (154 U. S., 218, 219):

> * * * If, as was intimated in that case, interstate commerce means simply commerce between the States, it must apply to all commerce which crosses the State line, regardless of the distance from which it comes or to which it is bound, before or after crossing such State line—in other words, if it be com-

> merce to send goods from Cincinnati, in Ohio, to Lexington, in Kentucky, *it is equally such* to send goods or *to travel in person from Cincinnati to Covington;* * * * Commerce was defined in *Gibbons* v. *Ogden* (9 Wheat., 1, 189) to be "intercourse," and *the thousands of people who daily pass and repass over this bridge may be as truly said to be engaged in commerce* as if they were shipping cargoes of merchandise from New York to Liverpool.

In the *Lottery Case* (188 U. S., 321, 352), after referring to previous decisions, the court said:

> * * * They show that commerce among the States embraces navigation, intercourse, communication, traffic, *the transit of persons,* and the transmission of messages by telegraph.

2. The regulative power of Congress extends to the absolute prohibition of the transportation and transit in interstate or foreign commerce of certain subjects of commerce.

Lottery Case (188 U. S., 321).

In the *Lottery Case* it was held to be within the power of Congress to prohibit the transportation in interstate commerce of lottery tickets, because of the immoral nature of lotteries. The court in that case refers to several other instances of the fact that the regulation of interstate commerce might sometimes appropriately assume the form of prohibition, namely, the statutes of the United States prohibiting the transportation and transit of diseased cattle, the Sherman Anti-trust Act, and the statutes subjecting liquor shipped in interstate commerce to the laws of the several States upon its arrival therein.

The *Lottery Case* establishes the principle that it is equally within the power of Congress, in regulating interstate commerce, to protect the public morals as it is to protect the public health or the economic welfare of the people, and it is upon this principle that the White-Slave Traffic Act rests.

This court has also repeatedly recognized the authority of Congress to regulate the transit of persons, in interstate and foreign commerce, to the extent of prohibition, by quarantine regulations.

Compagnie Francaise etc. v. Board of Health (186 U.S., 380,387,389).

3. The transportation of women and girls for the purpose of prostitution or debauchery or other immoral purpose is one of the kinds of interstate or foreign commerce that may be suppressed by Congress.

Clearly, if Congress has the power to prohibit the transportation of lottery tickets in interstate or foreign commerce because of the immoral nature of lotteries, it may also prohibit the transportation in such commerce of women and girls for immoral purposes, a far more invidious practice, persons, as above shown, being the subjects as well as the means of commerce, and their transportation and transit in interstate or foreign commerce a matter of Congressional control.

The act is not an encroachment upon the police powers of the States. It merely aids the States in the enforcement of their own laws on the subject of immorality, prohibiting that which the State can reach, if at all, only in part; for while the State might prohibit immoral practices within its limits, its power to prevent the introduction of immoral persons is limited.

It is true that the States alone can regulate the practice of prostitution therein. (*Keller* v. *United States*, 213, U. S. 138.) But the States alone can regulate the lottery business therein. So far, however, as either is conducted through the channels of interstate or foreign commerce, it becomes a matter of Congressional regulation.

It is also immaterial that the States may, perhaps, under their police powers, prohibit prostitutes or other immoral persons from coming or being transported into their limits. Assuming that they have such power, that fact does not remove the subject of Congressional control. The States may enact proper quarantine laws with respect to cattle and, to a certain extent at least, regulate their interstate or foreign transportation. Nevertheless, such transportation is a matter primarily for regulation by Congress.

Reid v. *Colorado* (187 U. S., 137).
Lottery Case (188 U. S., 358–359).

But State regulation can not reach those who, beyond its limits, solicit and induce women and girls to come within its jurisdiction for immoral purposes—the thing which is the primary object of the White-Slave Traffic Act. Federal regulation is necessary to bring about the desired result.

Nor is the White-Slave Traffic Act an unwarranted invasion of personal liberty. As said in *Addyston Pipe & Steel Company* v. *United States* (175 U. S., 229), the provision of the Constitution protecting a person from being deprived of his liberty without due process of law "is, to some extent, limited by the commerce clause of the Constitution." It was therefore held in that case that under that clause certain forms of private contracts could be prohibited.

In the *Lottery Case* the court said that no clause of the Constitution "can be cited which, in any

degree, countenances the suggestion that one may, of right, carry or cause to be carried from one State to another that which will harm the public morals;" that a lottery "is a kind of traffic which no one can be entitled to pursue as of right;" and that the court "should hesitate long before adjudging that an evil of such appalling character, carried on through interstate commerce, can not be met and crushed by the only power competent to that end" (188 U. S., 356, 357, 358). These observations are certainly equally pertinent here.

In *Reid* v. *Colorado* it was said that no one is given by the Constitution "the *right* to introduce into a State, against its will, live stock affected by a contagious, infectious or communicable disease, and whose presence in the State will or may be injurious to its domestic animals;" that "the State—*Congress not having assumed charge of the matter as involved in interstate commerce*—may protect its people and their property against such dangers" (187 U. S., 151).

The plenary power of Congress over the subject matter mentioned was thus recognized. Will it be said that Congress, if it chooses to act, can not protect the people of the several States against the introduction of women and girls for the purposes of prostitution and debauchery—that the law affords greater security to cattle than it does to persons?

4. Having the power to prohibit the transportation of women and girls in interstate and foreign commerce for immoral purposes, and having exercised such power, Congress may make the prohibition effectual by punishing any person who knowingly induces, solicits, or facilitates such illegal transportation.

The great body of our criminal law has been enacted by Congress without express authority other than that contained in the general provision of the Constitution giving it power to enact all laws necessary to carry into effect the powers specifically vested in the Federal Government (Const. Art. I, sec. 8, cl. 18). Not only has Congress the power, under this provision, to punish the doing of acts inimical to the public welfare, but it may go further and reach such acts in their very inception—punish those who conceive or induce such illegal acts. This is illustrated by the statutes punishing conspiracy, perhaps the most important, because the most effective, of all our criminal legislation. Thus, in order to maintain the *freedom* of interstate commerce, Congress, in the Sherman Anti-Trust Act, has penalized those who *conspire*, as well as those who contract and combine, to restrain such trade and commerce. So, in the White-Slave Traffic Act (with the opposite purpose in view—namely, the *suppression* of that particular form of commerce), Congress has sought to go to the very root of the matter by punishing those who induce, solicit, or facilitate the transportation in interstate and foreign commerce of women and girls for immoral

purposes, as well as those who actually transport or cause them to be transported for such purposes.

The power of Congress effectively to regulate interstate commerce by reaching unlawful acts in their very inception is illustrated, conversely, by the case of *Hipolite Egg Co.* v. *United States* (220 U. S., 45), where its authority to direct the seizure and condemnation of prohibited articles in interstate commerce at their point of destination was upheld as an appropriate means for the enforcement of the prohibition.

So, because the *solicitation* of interstate commerce is a matter of Federal regulation exclusively, the State can not impose a license tax thereon.

Robbins v. *Shelby Taxing District* (120 U. S., 489).

Asher v. *Texas* (128 U. S., 129).

In *McCall* v. *California* (136 U. S., 104) it was held that an agency created in San Francisco for the purpose of *inducing* passengers to travel over a certain interstate route was engaged in interstate commerce, and a State license tax on such an agency unconstitutional.

The provision of the act with reference to persons purchasing tickets for women and girls for the purpose of being transported in interstate or foreign commerce for immoral purposes, and those relating to the persuasion, inducement, enticement, or coercion of women and girls to go and be transported in such commerce, are similar to the provisions in the immigration laws making it an offense to assist, encourage, or solicit the importation or migration of alien con-

tract laborers. (Act of Feb. 20, 1907, 34 Stat., 898, secs. 4, 5, 6 and 7.)

In *United States* v. *Craig* (28 Fed., 795) the Circuit Court for the Eastern District of Michigan sustained the constitutionality of the corresponding provisions of the immigration act of February 26, 1885, on the subject of assisting, encouraging, or soliciting the immigration or importation of alien contract laborers. In that case Mr. Justice Brown, after pointing out that the definition of the word "commerce" by the lexicographers as "an exchange of commodities" had been rejected by this court and the term "held to include all navigation and intercourse—*to* the transportation of passengers as well as property," said (ib., 798–799):

> It is claimed, however, that this act is not a valid exercise of the power of regulating commerce, inasmuch as it forbids the encouragement and solicitation of an act which still continues to be perfectly lawful in itself, viz, the immigration of alien laborers. We think this criticism is unfounded. The motives and history of the act are matters of common knowledge. It had become the practice for large capitalists in this country to contract with their agents abroad for the shipment of great numbers of an ignorant and servile class of foreign laborers, under contracts, by which the employer agreed, upon the one hand, to prepay their passage, while, upon the other hand, the laborers agreed to work after their arrival for a certain time at a low rate of wages. The effect of this was to break down the labor

market, and to reduce other laborers engaged in like occupations to the level of the assisted immigrant. The evil finally became so flagrant that an appeal was made to Congress for relief by the passage of the act in question, the design of which was to raise the standard of foreign immigrants, and to discountenance the migration of those who had not sufficient means in their own hands, or those of their friends, to pay their passage. While the act is undoubtedly, to a certain extent, a reversal of the traditional policy of the Government, it does not purport to inhibit or discourage the immigration of foreign laborers in general, but only the importation of such laborers under contracts made previous to their migration or importation. It seeks to effect this by declaring (1) that the prepayment of transportation, or the assistance or encouragement of the migration, of aliens or foreigners under contracts to labor in the United States shall be unlawful; (2) that such contracts made previous to their migration shall be void; (3) that every person or corporation guilty of unlawfully assisting or encouraging the immigration of such laborers shall be subject to a penalty; (4) that the master of any vessel knowingly bringing such laborers into the country shall be deemed guilty of a misdemeanor.

It was undoubtedly competent for Congress to have gone still further, and provided for the return of such laborers to their own country, as was done in the other acts inhibiting the entry of lunatics, paupers, and Chinese; but

> the act is not to be deemed unconstitutional because the legislature has not seen fit to use all the weapons it held in its hands, or apply unnecessarily harsh remedies. Indeed, except in this particular, the act does not differ materially from the other acts upon the same general subject, and is strictly in line with them. In each of them the immigration is directly or indirectly declared to be unlawful, though in none of them is any attempt made to punish the immigrant. While this does not declare in express terms that the immigration of foreigners under contracts to labor here shall be deemed unlawful, the whole tenor of the statute indicates this to be its purpose, though the penalty is visited only upon the party who aids and assists the immigrant. But, conceding that the contract only is illegal and void, and the immigration lawful, we know of no principle which forbids Congress from declaring that a certain method of procuring the immigration of foreigners shall be unlawful, and imposing a punishment upon those who adopt that method. While the case is one of considerable public interest, the constitutionality of the act is too clear to require an elaborate consideration.

It will be observed that these remarks of Mr. Justice Brown completely dispose of the argument that the White-Slave Traffic Act is invalid because it does not go so far as to prohibit the voluntary transit of women and girls in interstate or foreign commerce for immoral purposes. As above pointed out, the act is aimed at a very different and far more reprehensible

thing—the exploitation of women and girls for private gain. It is to reach this nefarious traffic—which is plainly subject to the control of Congress so far as it is conducted through the channels of interstate or foreign commerce—that not only the transportation of women and girls for immoral purposes is prohibited, but the acts of enticing, soliciting, and inducing them to go and be transported for such purposes, and of furnishing them with the means of transportation.

It is respectfully submitted, therefore, that the several provisions of the White-Slave Traffic Act, upon which the indictments in these cases were founded, are constitutional.

No. 381.

The Case of Effie Hoke and Basile Economides.

STATEMENT OF CASE.

Plaintiffs in error were indicted for violating the White-Slave Traffic Act in knowingly persuading, inducing, and enticing three young girls to go from New Orleans, La., to Beaumont, Tex., for the purpose of prostitution, and thereby causing, aiding, or assisting in causing their transportation as passengers upon an interstate common carrier between the two points.

The first two counts of the indictment were based upon section 3 of the act, and the third count upon section 4, the girl therein referred to (Gertrude Baden) being under the age of 18 years.

Demurrers to the indictment and motions to quash the same on the ground of the unconstitutionality of the White-Slave Traffic Act were made and overruled. (R., 11–16.)

Both defendants were convicted upon all three counts and sentenced to imprisonment in the penitentiary for two years on each count, the sentences to run successively (R., 9–10). Thereupon this writ of error was sued out.

The following statement of the evidence adduced at the trial may be helpful in considering some of the questions of law raised on this writ of error:

Effie Hoke, one of the defendants, testifying in her own behalf, stated, among other things, that she

had been a prostitute for about 15 or 16 years; the madame of a sporting house in Beaumont, Tex.; and that on her trip to New Orleans, La., she visited many of the assignation houses there. (R., 287, 289, 301.)

Basile Economides, the other defendant, also testified on his own behalf, and stated, among other things, that he conducted a saloon and wine room in New Orleans, La., that his place was patronized by "common women and streetwalkers," and that no "respectable women" came to his place (R., 262); also that he knew that Effie Hoke, his codefendant, was a "sporting woman." (R., 268.)

The three girls whom these defendants were charged with inducing or persuading to go from New Orleans, La., to Beaumont, Tex., for purposes of prostitution, were named Annette, Florence, and Gertrude Baden, aged 20, 18, and 16 years, respectively.

Annette testified, in substance, that when she and her sister Florence were passing the saloon of Economides, he called to them to come in. They passed on, but he sent a small boy to call them back. Annette went back, and Economides told her to go and get Florence. Florence returned and joined them, they all indulging in drinks. Economides told them he wanted them to meet "a lady friend" of his, and that he had 'phoned for her. In about 20 minutes Effie Hoke came in, and they all drank together. Economides said to the girls, "Here is the lady from Beaumont I want you to meet," and to Effie Hoke he said, "Miss Effie, these are the girls I have been

telling you about." After further drinking, Economides said to this witness, "You have another sister, Gertrude; go get her." The witness told them she did not want her little sister along, but Effie Hoke said, "Yes, here is 50 cents, go get Gertrude." Florence went and got Gertrude. Effie Hoke told them that she had a private boarding house in Beaumont "and there was no reason for working for $5 a week when salesladies could get $15 a week in Beaumont." Economides said his lady friend would treat them nice; that she had a private boarding house, and that they "would be well taken care of—just like a mother." After the girls decided to go, Economides phoned for a cab, which took them first to "Miss Pauline's." Economides told them to tell Effie Hoke that they owed their landlady $12, and when asked why they should do this, when it was not true, he said that when they got to Beaumont, they might want to come back sometime and he would send them the $12 to come back on; that the taxicab was paid for by Effie Hoke. Effie Hoke then sent a girl along to take them to Beaumont, giving her the money to pay the fares. They then went to the Union Station and took the train, remaining thereon until they reached Beaumont. They went to Effie Hoke's house in Beaumont, in a taxicab, and found for the first time that it was a house of prostitution. They wanted to come back, but were prevented by Effie Hoke, who told them that they owed her $6; that she had given Economides $8.35 each for railroad fare, and that their

board started that day. She subsequently took the clothes of two of the girls, and locked them up, with the statement that they could leave when they paid what she claimed they owed her. (R., 17 to 30.)

This witness admitted on cross-examination that she had previously visited hotels for the purpose of meeting men there (R., 45 and 53), and was not virtuous prior to going to Beaumont. (R., 74.) That Economides had tried to get her and Florence to live with "Miss Pauline" (R., 75), who kept an assignation house. (R., 23.)

The testimony of the other two sisters, Florence and Gertrude, is substantially to the same effect. (R., 79–136.) They also admitted on cross-examination that they were not virtuous prior to going to Beaumont. (R., 108, 132.)

Theresa Flood, who took these girls to Beaumon at the instance of Effie Hoke, testified that Effie told her she had two girls and possibly three that she wanted her to take over to Beaumont; that Effie gave her $45 to pay their fares over (R., 172–173); that she took them to the Union Station and bought tickets over the Southern Pacific, reaching Beaumont the next morning. (R., 173, 174.)

Ouida Landry testified that Effie Hoke told her, at the time of Effie's visit to New Orleans, that there was to be a "big carnival" in Texas, and that she wanted some girls; that she would give her $10 apiece to get them (R., 185); she heard these girls when they reached Effie Hoke's house in Beaumont tell her that they wanted to go home, and Effie told

them she "was out about $500 on her trip to New Orleans" (R., 187); that they must pay her what they owed, and that they could not leave until they paid (R., 188); that she admitted she was a prostitute. (R., 192.)

It is unnecessary to narrate the testimony of the other witnesses, many of whom contradicted much of that of the above witnesses, because the cases are here on writ of error, and this court will not undertake to weigh the evidence. (*Crumpton* v. *United States*, 138 U. S., 361, 363.) Nor would the rule be different if this court believed there was reasonable doubt as to the guilt of the defendants. (*Johnson* v. *United States*, 157 U. S., 320, 326.)

ARGUMENT.

I.

Plaintiffs in error contend first that there is a variance in that the indictment charged that the girls were transported over the Texas & New Orleans Railroad and the proof merely showed their transportation over the Southern Pacific Railroad.

An examination of the indictment shows that it describes the Texas & New Orleans Railroad Co. as a part of the Southern Pacific Railway system, so that proof of transportation by the latter system between New Orleans, La., and Beaumont, Tex., the points named in the indictment, would seem to reduce the variance, if any, to a mere technicality, which could not in any view of the case be said to have misled the accused. The particular railroad in this

case represents the means used by the accused in committing the offense, and proof of any common carrier would suffice, by analogy to the rule that where an indictment charges a murder by poisoning and specifies the poison, proof that death was brought about by a different poison would not constitute a material variance. (*Westmoreland* v. *United States*, 155 U. S., 545, 549.)

II.

The second and third assignments of error may be considered together, because they both relate to the third count of the indictment, which charges the accused with inducing or persuading Gertrude to go to Beaumont for purposes of prostitution.

It is first alleged that the evidence does not show that the accused induced or persuaded Gertrude to take the trip. In view of the testimony upon this point (R., 21 and 133), the determination of this question would seem to require a weighing of the evidence, which, as heretofore pointed out, this court will not undertake in a case before it on writ of error.

Exception is also taken to that part of the court's instructions to the jury, bearing upon the question of agency between Florence and the accused in inducing Gertrude to go to Beaumont.

The court's instruction upon this point is as follows (R., 353):

> With reference to the third count in the bill of indictment, if the jury find from the evidence that the witness Florence Baden,

alias Florence Hays, persuaded her sister Gertrude to come to Beaumont, but you believe from the evidence beyond a reasonable doubt that in so doing she acted for the defendants and at their request, then I inform you, as a matter of law, that the act of Florence in trying to persuade, induce or entice her sister Gertrude to make the interstate journey would be the act and statement of the defendants or the one of them who requested her to see and persuade Gertrude, and the defendants, or the one of them who made the request, if after being made, Florence acted upon it, would be liable and bound by the persuasion, inducement or enticement that Florence offered to Gertrude, but the court tells you, furthermore, that if Gertrude came of her own accord, or through the persuasion of her sister Florence, and you do not find that Florence in so persuading her, was acting for the defendants, then the defendants can not be convicted on count three, and it would be the duty of the jury to acquit them upon that count if you find that to be true.

This was clearly a correct statement of the law, and fully protected the rights of the accused.

III.

In their fourth assignment of error, accused complain of the refusal of the court to grant certain requested instructions.

A reading of the court's charge, as a whole, shows not only that it carefully covers all the requested

instructions which it would have been otherwise proper to grant, but that it was most favorable to the accused.

IV.

Under the fifth assignment of error objection is made to the reception in evidence of the testimony of the girls as to the treatment accorded them and the life they lived after they reached Effie Hoke's house in Beaumont.

Certainly this evidence sheds light upon the intention of the accused in inducing these girls to go to Beaumont, and was therefore properly admissible; The court was careful to caution the jury with respect to the extent to which they could consider such testimony. (R., 31, 350 and 351.)

V.

The sixth assignment of error excepts to the action of the court in excluding certain evidence offered by the accused for the purpose of showing that the girls were prostitutes prior to their going to Beaumont.

This evidence was clearly immaterial, because the act, while designed to protect the innocent and virtuous, is not limited to them. The purpose of the act is to break up the traffic in white women and girls—to prevent even fallen women from being enslaved; to release them from the clutches of procurers and panderers.

VI.

The contention, raised in the brief filed on behalf of Economides, that, under the statute, "there must be some actual, overt, tangible act of assistance in the taking of the journey, such as lending them (the girls) money for their passage, or the purchasing of the tickets for them, and the like," would seem to require no extended discussion.

Even though the construction contended for be correct, still, as pointed out by the lower court, it was within the province of the jury to find from all the evidence that a common design or scheme existed between the two accused to induce the girls to go by an interstate common carrier to Beaumont, Tex., for purposes of prostitution, in which event the act of one of the defendants in causing the girls to take the trip would be equally the act of the other.

This point was carefully covered by the court in its charge to the jury. (R., 350.)

No. 588.

The Case of Louis Athanasaw and Mitchell Sampson.

STATEMENT OF CASE.

These men were charged (in an indictment containing thirty-eight counts) with violating section 2 of the White-Slave Traffic Act by having transported or assisted in obtaining transportation for a girl named Agnes Couch, from Atlanta, Ga., to Tampa, Fla., "for the purpose of debauchery."

Defendants demurred to the indictment, challenging the constitutionality of the act and alleging that the indictment failed to specify the persons sought to be debauched; that it failed to charge that the purpose of debauchery existed in the minds of defendants prior to or during the transportation, and did not charge that the girl was actually transported in interstate commerce. (R., 11–12.)

The demurrer was overruled and defendants were tried and convicted, a general verdict of guilty as charged in the indictment being rendered. (R., 12–13.) Athanasaw was sentenced to imprisonment for two years and six months, and Sampson for one year and three months, in the penitentiary. (R., 13.)

A motion in arrest of judgment, based upon substantially the same grounds as the demurrer to the indictment, was overruled. (R., 13–14.)

At the trial Agnes Couch gave her age as 17 years, and said she lived at Suwanee, Ga. (R., 23.) She testified that in September, 1911, she was in Atlanta, Ga., and seeing an advertisement of Sam Massell for chorus girls, she applied at his office in Atlanta and signed a contract "to appear with the 'Imperial Musical Comedy Co.' at the Imperial Theater, Tampa, Fla., as a chorus girl," at a salary of $20 a week for the first four weeks, and $15 a week thereafter, she to board and room in the theater. (R., 23, 27.) The Imperial Theater was operated by the defendants, and Massell acted as their "booking representative" at Atlanta. (R., 27, 29.) After she signed the contract, Massell gave her a railroad ticket to Tampa which had been provided by the defendants for that purpose. (R., 23, 29.) She further testified (R., 23–24):

> * * * After I signed the contract Massell gave me a ticket from Atlanta, Ga., over the Southern and Seaboard Railways to Tampa, Fla., and I came with my trunk from Atlanta, Ga., to Tampa, Fla., over the railways above mentioned. I arrived in Tampa, Fla., on the 7th of September, 1911, at about 6.30 o'clock, and I went to the Imperial Theater and there met Mr. Louis Athanasaw, one of the defendants, at 7 o'clock. He showed me my room and took the check to get my trunk. I went to sleep and slept until 2 o'clock in the afternoon. At that hour one of the girls awoke me up to rehearse. I went down in the theater and stayed there about an hour rehearsing, singing, and then went to lunch in

the dining room. All of the girls were there and several boys. I had never had any stage experience. At lunch they were all smoking, cursing, and using such language I couldn't eat. After lunch I went to my room, and about 6 o'clock Louis Athanasaw, one of the defendants, came and said to me I would like it all right; that I was good looking and would make a hit, and not to let any of the boys fool me, and not be any of the boys' girl; to be his. He wanted me to be his girl; to talk to the boys and make a hit, and get all of the money I could out of them. His room was next to mine, and he told me he was coming in my room that night and sleep with me; and he kissed and caressed me. He told me to dress for the show that night and come down into the boxes. I went into the box about 9 o'clock. About that time Louis Athanasaw's son knocked on my door and told me to come to the boxes. In the box where I went there were four boys; they were smoking, cursing, and drinking. I sat down and the boys asked me what was the matter, I looked scared. I told them I was ashamed of being in a place like that; and Arthur Schlemann, one of the boys, said he would take me out. The others insisted on my staying, and said I would like it when I got broke in. I tried to go out with Schlemann, but a boy named Gilbert pulled me back, saying "Let that cheap guy alone." Schlemann said he would send a policeman, and in about 15 minutes Mr. Thompson and Mr. Evans came in for me. Mr. Louis Athanasaw

asked what the trouble was; why I would not stay until morning, when he would send me away if I spent the night; he said I could not go that night; and he said I could not have my trunk, he had held it for transportation. I went away with Mr. Thompson and Mr. Evans. The boxes in that theater were looking over the stage; with a little opening looking onto the stage. There was a door in the back of it that could be closed and bolted. They were on the second floor. There were some chairs and a table in it.

Defendant Athanasaw denied that he made improper proposals to Agnes Couch, but in other essential respects the girl's testimony was not contradicted, and was supported, as to the character of the place and what took place, by the testimony of Arthur Schlemann (R., 24) and L. W. Evans (R., 25).

ARGUMENT.

The refusal of the court to grant a new trial can not be assigned as error. (*Addington* v. *United States*, 165 U. S., 185; *Wheeler* v. *United States*, 159 U. S., 523, 524.)

The other errors assigned concern instructions to the jury.

It is alleged that the court erred in refusing to instruct the jury that, before they could find defendants guilty, they must be satisfied that they had the intent, at the time of procuring the transportation of Agnes Couch from Atlanta to Tampa, to debauch her, or to procure her debauchment by some other person, or to induce, entice, or compel her to give herself up

to debauchery. The court properly refused this instruction. The indictment did not charge that defendants, or either of them, intended to debauch the girl or to procure any other person to debauch her. It charged, in the language of the act, that they knowingly procured her transportation in interstate commerce "for the purpose of debauchery" or with the intent to induce, entice, or compel her "to give herself up to debauchery."

It is also alleged that the court erred in refusing to charge the jury "that the word 'debauch,' as used in the act of Congress under which the defendants are indicted, and in the indictment in this case, means sexual intercourse between a man and a woman."

The statute does not use the word "debauch," but "debauchery," and the indictment followed the statute.

The other errors assigned relate, in the main, to the court's definition of debauchery and the instruction, in substance, that the jury should judge of defendants' intent from the conditions in which they placed Agnes Couch.

It is submitted that the charge to the jury conveyed a correct conception of the law. The court defined debauchery (R., 35) as—

> * * * an excessive indulgence of the body; licentiousness, drunkenness, corruption of innocence, taking up vicious habits. The term debauchery as used in this statute has an idea of sexual immorality; that is, it has the idea of a life which will lead eventually or tends to lead to sexual immorality.

The jury were instructed to consider whether the influences in which the girl was surrounded by the employment which defendants called her to "did or did not tend to induce her to give herself up to a condition of debauchery which eventually, necessarily and naturally would lead to a course of immorality sexually." Continuing, the court said (R., 35):

> You have heard the testimony in the case in regard to the circumstances in which she was placed. You have viewed the scene where she was employed. You have examined by the testimony and your observation what was the character and what was the condition or influences in which the girl was placed by the defendants. Was or was not it a condition that would necessarily and naturally lead to a life of debauchery of a carnal nature relating to sexual intercourse between man and woman?

As the court said (R., 34), it is to a certain extent a case of circumstantial evidence. The intent of defendants must necessarily be presumed from the position in which they placed the girl. In a case charging the transportation of a girl in interstate commerce for the purpose of prostitution, in violation of this act, it doubtless would be sufficient proof of intent merely to show that defendant placed the girl in a house of prostitution. So in this case, defendants' intent that the girl should give herself up to debauchery is to be presumed if they placed her in a position where the influences naturally and inevitably tended to lead to debauchery.

Nos. 602 and 603.

The Cases of Emma Harris et al., and Della Bennett.

STATEMENT OF CASES.

In the Harris case, the first count of the indictment charged that the defendants unlawfully and knowingly caused to be transported, and aided and assisted in so causing to be transported, from Charleston, W. Va., to Cincinnati, Ohio, two certain women, for the purpose of prostitution—a violation of section 2 of the act.

The second count charged the purchase of railroad tickets for the transportation of said women for the purpose stated—also a violation of section 2 of the act.

The third count charged the defendants with persuading, inducing, enticing, and causing to be persuaded, induced, and enticed, said women to go from Charleston, W. Va., to Cincinnati, Ohio, for the purpose of prostitution, and thereby knowingly causing and aiding and assisting in causing said women to go and be transported as passengers upon a common carrier by railroad engaged in interstate commerce—a violation of section 3 of the act.

The indictment in the Bennett case likewise contained three counts, framed as in the Harris case, charging violations of sections 2 and 3 of the act by

the defendant in causing two certain women to go and be transported from Chicago, Ill., to Cincinnati, Ohio, for the purpose of prostitution.

By motions and demurrers the constitutionality of the White-Slave Traffic Act and certain questions as to evidence, etc., were raised in the trial court. These were overruled, and the defendants, upon their pleas of not guilty, were tried separately and convicted upon each count of the respective indictments.

The Circuit Court of Appeals, upon writs of error, affirmed the judgment of the District Court in each case. (R., No. 602, p. 73; R., No. 603, p. 89.) The cases are here upon writ of error and writ of certiorari.

ARGUMENT.

I.

The writs of error should be dismissed.

These being cases where the jurisdiction of the District Court depended solely upon the fact that they arose under the *criminal* laws, the judgment of the Circuit Court of Appeals was final, and no appeal lay to this court.

Macfadden v. *United States*, 213 U. S., 288.

In addition to what was said in the *Macfadden* case, it is to be observed that the amount of money necessary to authorize an appeal to this court is not involved. In *Spreckels Sugar Refining Company* v. *McClain* (192 U. S., 397, 408–9), where the jurisdiction of this court was sustained, that being a revenue case, the court took care to point out that the requisite jurisdictional amount was involved.

II.

As to variance between allegations and proof respecting the names of the women charged to have been transported.

The indictment in the Harris case charged the transportation of Stella Larkins and Nellie Stover, and in the Bennett case the transportation of Opal Clark and Eva Parks. Larkins, Stover, and Clark were prosecuting witnesses. When asked to give their names to the jury, they gave the names as in the indictments. (R., No. 602, pp. 18, 32; R., No. 603, p. 18.) On cross-examination Larkins admitted her real name to be Estella Bowles, but said she always went by the name of Stella Larkins ever since she "went in bad." (R., No. 602, p. 25.) Nellie Stover, on cross-examination, admitted her real name to be Myrtie Watson. (R., No. 602, p. 37.) On redirect examination she testified as follows (R., No. 602, p. 41):

> Q. What was the name you were known by in West Virginia?—A. Nellie Stover.
>
> Q. And what was the name Bessie Green was known by?—A. Bessie Green.
>
> Q. And Stella Larkins; what was the name she was known by?—A. Stella Larkins.

It should be noted here that the record does not show that any exception was taken to this alleged variance in the Harris case at the trial. It can not, therefore, be assigned as error in this court. (*Railway Co.* v. *Heck*, 102 U. S., 120; *Morrill* v. *Jones*, 106 U. S., 466, 467.)

In the Bennett case the Clark woman gave her name as Opal Clark; said she formerly was known as Jeanette Clark, but she changed it to Opal Clark "along before Christmas." (R., 18, 19.) On cross-examination she admitted her right name to be Laplante, by marriage in 1905. (R., 30.)

The names given in the indictments were those by which the women were popularly known. To have given the real names would obviously have been misleading to defendants. That there was no doubt in the minds of defendants as to the identity of these women is shown by the cross-examinations, which revealed a thorough knowledge of their past life as prostitutes and showed that they were fully prepared for the trial.

In *People* v. *Plyler* (121 Cal., 160), the defendant was charged with having committed a crime upon Charles Harris, whose real name was shown upon the trial to be Isaac Crossley. The court said (p. 163):

> This complaint and information alike charged a crime committed upon Charles Harris. Harris testified that such was the name by which he had always been known in the community. Here was no variance. . There was an absolute identity in names and person, and the fact disclosed upon the trial for the first time that the complaining witness' true name was something different did not constitute a variance, and could not have injured defendant in the slightest degree.

In *State* v. *Brecht* (41 Minn., 50, 54) the court said:

> As names are given to persons for the purpose of identifying them, it follows that, if a

person is equally well known by either of two different names, either may be used where the purpose is merely that of pointing out the person intended.

See also *Putnam* v. *United States* (162 U. S., 687, 691).

Faust v. *United States* (163 U. S., 452, 454).

Com. v. *Warren* (167 Mass., 53).

Reg. v. *Gregory* (8 Q. B., A. & E., 508, 514).

Beale Cr. Pl. & Pr. (sec. 121).

II.

As to the sufficiency of the evidence against Emma Harris.

The evidence adduced at the trial clearly justifies the inference that Emma Harris, who kept a house of prostitution in Cincinnati, Ohio (R., 42), sent Bessie Green, one of the inmates (R., 47), and also a codefendant, to Charleston, W. Va., for the purpose of securing girls to enter her house, she to bear all the expenses incident thereto, and that, in pursuance of such arrangement the girls named in the indictment, Stella Larkins and Nellie Stover, were induced to come to Cincinnati.

Both Emma Harris and Bessie Green testified that it was only four or five days after she left the Harris house in Cincinnati until she returned with the two girls. (R., 45, 52.)

Stella Larkins testified that she lived in a "sporting house" in Charlestown, W. Va.; that while downtown one day she had occasion to telephone to the house and was told that a woman was there to see her; that she returned and was thereupon introduced to Bessie

Green; that they talked about coming to Cincinnati, and Bessie said she would pay her indebtedness to her landlady—about $30—if she (Stella) would go, whereupon she agreed to go; that Bessie paid her landlady $15, and said she would send the rest; that her trunk was sent to the house of Emma Harris in Cincinnati; that after stopping to get the other girl, Nellie Stover, they all three went to the depot; that Bessie paid for her ticket and all thereupon boarded the train and came to Cincinnati; that upon reaching Cincinnati they went direct to the house of Emma Harris, who told her it was a good place to make money; that her trunk reached there the next day, Emma Harris paying the $15 due on it, charging it up against her, together with the railroad fare; that altogether she had charged her up with about $38. (R., 18, et seq.)

Nellie Stover, the other girl, testified that Bessie Green came to the sporting house at which she was staying, *and she asked her if she was looking for girls*, to which Bessie replied that she was; that she told Bessie she would like to go to Cincinnati if she were not indebted to her landlady to the extent of $15; that Bessie said she would pay it; that they went to the depot, Bessie paying the railroad fare; that after reaching Cincinnati went to the house of Emma Harris, who said that she hoped she (Nellie) would like it there, and that it was a good house to make money; that her trunk subsequently arrived, and Emma Harris paid the charges on it—$15.50—and then entered it and

the railroad fare in a book against her. (R., 32 et seq.)

Lemuel Watson testified that Emma Harris told him she had paid the charges on the trunk of the Larkin girl, and showed him her account book to that effect. (R., 55.)

This court will not undertake to weigh the evidence on writ of error (*Crumpton* v. *United States*, 138 U. S., 361), or certiorari (*Delk* v. *St. Louis and San Francisco Railroad Company*, 220 U. S., 580, 588, 589).

There was a general verdict and sentence, and, if any count of the indictment supports the judgment, it will not be disturbed. (*Claassen* v. *United States*, 142 U. S., 140, 146.)

The sentence imposed upon Harris was not in excess of that which might have been imposed under any one of the counts. (R., 10.)

III.

Other alleged errors in the Bennett case.

1. Counsel for Bennett contends that the trial court erred in refusing to instruct the jury to return a verdict of not guilty on the second count of the indictment, for the reason that it was alleged therein that the tickets were procured at Chicago, whereas the testimony showed that they were procured at Cincinnati.

Obviously counsel has failed to observe the clear and specific allegations of this count. It charges that Della Bennett on or about September 25, 1910, in the

County of Hamilton, Ohio, "did then and there unlawfully and knowingly procure and obtain, and cause to be procured and obtained, at the city of Chicago, in the State of Illinois, two certain railroad passenger tickets," etc. The evidence showed that Bennett paid for the tickets at Cincinnati and arranged for them to be furnished to the women at Chicago. (R., 46–48.)

2. The indictment against Bennett charges that she caused the transportation of two women, Opal Clark and Eva Parks. It is contended that there was no testimony to show a violation of the law with respect to Eva Parks. This ignores the fact that the Parks girl used a ticket in going from Chicago to Cincinnati furnished by Bennett. While it does not appear that Bennett knew that the ticket was to be used by Parks, or indeed by any particular person, nevertheless the evidence shows that the ticket was furnished for the purpose of bringing some woman from Chicago to Cincinnati in violation of law. (R., 25, 48.) Upon their arrival at Cincinnati both Clark and Parks went to Bennett's house of prostitution, where Clark remained for three weeks and Parks longer. (R., 26–27.)

3. It is contended that the trial court erred in refusing to charge the jury that, if they found from the evidence that either of the women were not transported for the purpose of prostitution, the defendant should be acquitted on the first count of the indictment. It is claimed that this charge was justified in view of the testimony of the Clark woman that she and the Parks woman intended to go on the stage in Cincinnati and Toledo.

The testimony of Opal Clark was that they came to Cincinnati for the purpose of prostitution, "but we meant afterwards to go from there to Toledo on the stage." (R., 43.)

4. Error is assigned to the refusal of the court to instruct the jury that if they should find from the testimony that defendant did not persuade, induce, and entice Opal Clark and Eva Parks to come from Chicago to Cincinnati for the purpose of prostitution and with the intention that each should engage in acts of prostitution in Cincinnati, defendant should be acquitted.

Such a charge manifestly would have been improper. It would have meant a total disregard of the first and second counts of the indictment based upon the provisions of section 2 as to transportation, under which persuasion, inducement or enticement are not elements of the offense.

5. Error is also assigned to the refusal of the court to charge the jury as follows:

> If the jury finds from the testimony that only one woman was transported, or that the defendant was guilty of the acts charged in all three counts of the indictment against one woman who is mentioned in the indictment and not against both, it is your duty to acquit the defendant under all counts of the indictment.

This charge was requested upon the theory that there was no evidence to show a violation with respect to Eva Parks, and that failure of proof that

both the women referred to in the indictment had been transported, or caused to be transported, as alleged, would be fatal. As heretofore shown, there was such evidence in the use by the Clark woman of the railroad ticket furnished by defendant. Besides, the offense was complete if the evidence showed that one of the women was so transported or caused to be transported. (See opinion of the Circuit Court of Appeals, R., 91.)

6. Exception is taken to that part of the charge to the jury in which the court, after instructing them that, if they found from the evidence that Opal Clark was an accomplice, it would not be safe to convict upon her uncorroborated testimony, added:

> There is evidence tending to corroborate her testimony and it is for you to consider its force and value and the weight to give it.

The court merely stated what was a fact. The evidence tending to corroborate Clark's testimony was the letters from defendant to the Clark woman in Chicago, which were put in evidence, as well as the matter of the railroad tickets.

The judgment in each of these cases should be affirmed.

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